

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Application 30251
Johnson Creek Ditch Users Association

ORDER APPROVING ISSUANCE OF PERMIT

SOURCE: Unnamed Stream (aka Indian Creek) tributary to Montgomery Creek

COUNTY: Shasta

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

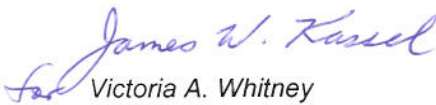
WHEREAS:

1. Application 30251 was filed with the State Water Resources Control Board (State Water Board) on May 6, 1993 by the Johnson Creek Ditch Users Association (Association). The application was revised on April 15, 1998. The revised application seeks an appropriative right to divert 0.25 cubic foot per second (cfs) with an annual limit of 181 acre-feet from an unnamed stream known as Indian Creek. Originally, the application also requested to divert from an unnamed stream (aka Johnson Creek).
2. The application was noticed on February 1, 1994. The following protests were filed:
(a) Department of Fish and Game, (b) Pacific Gas and Electric Company, (c) Richard M. Brown, (d) Donald and Mary Ann Robinson, (e) Lester E. and Patricia Eldridge, (f) Gaylen and Katherine Eslinger, (g) Georgene Rieck, (h) United States Bureau of Reclamation (Reclamation), and (i) El Dorado Hydro.
3. The protests filed by Pacific Gas and Electric Company, Reclamation, and El Dorado Hydro were dismissed, with the understanding that: the Applicant limit its maximum diversion rate to one cfs; conditions would be included in the permit to require a water service contract with Reclamation to cover summer diversion (permit condition 89); and Applicant's diversions are made only when Montgomery Creek flow is greater than 100 cfs at the El Dorado Hydro point of generation.
4. The protests filed by Brown, Robinson, Eldridge, Eslinger and Rieck based on both prior rights and environmental considerations related solely to diversion from Johnson Creek. On November 19, 1997, the Division confirmed that Johnson Creek was deleted as a source. Accordingly, the protests are canceled since they are based on a source that is no longer part of Application 30251.
5. The protest filed by Department of Fish and Game is no longer applicable because the protest identified Johnson Creek as providing aquatic habitat, but did not identify any concerns regarding diversion from Indian Creek.

6. Due to the passage of time, some of the lands in the place of use have changed ownership. On July 3, 1998, the Division contacted the Applicants regarding ownership of the filing. The Division was requested on July 30, 1998 to remove all but two of the applicants from the filing. However on July 14, 1998, the Division was advised that the ditch users group is based on a 1976-recorded agreement. Therefore the permit will be issued to the Johnson Creek Ditch Users Association (Association). The place of use includes all parcels served by the Upper Ditch as identified in the July 17 to 21, 1995 Field Investigation Report prepared by the Division. The Association is responsible for determining which parcels it will serve.
7. There is unappropriated water from Indian Creek, based on the July 17 to 21, 1995 Division Field Investigation Report, prepared in accordance with the Order of Reference dated January 11, 1995, from Shasta County Superior Court. In Resolution No. 96-087, the State Water Board adopted the Report of Referee, including Appendix B, which was the Field Investigation Report.
8. The water will be diverted and used without injury to any lawful user of water.
9. The intended use is beneficial. The Applicants request a right to continue directly diverting 0.25 cfs for irrigation and domestic use from Indian Creek.
10. All project facilities were in place when the application was filed. When Johnson Creek was eliminated as a source, diversion decreased. Pursuant to the California Environmental Quality Act, the State Water Board is issuing a Notice of Exemption based on:
 1. This project will not cause significant adverse impacts on any sensitive environment and will not result in significant cumulative impacts.
 2. There will be no expansion in use beyond that which was occurring in 1993 when the application was filed.

NOW, THEREFORE, IT IS ORDERED THAT A PERMIT IS ISSUED FOR APPLICATION 30251, subject to the conditions of the enclosed permit.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney
Deputy Director for Water Rights

Dated: **OCT 19 2009**

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21250

Application **30251** of

Johnson Creek Ditch Users Association
c/o Larry Johnson
19277 Woodhill Drive
Montgomery Creek, CA 96065

Filed on **May 6, 1993**, has been approved by the State Water Resources Control Board (State Water Board)
SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:

Unnamed Stream (aka Indian Creek)

Tributary to:

Montgomery Creek thence
Pit River

within the County of **Shasta**

2. Location of point of diversion

By California Coordinate System of 1983 in Zone 1	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
North 2,192,918 feet and East 6,589,124 feet	SE ¼ of NE ¼	32	35N	1E	MD

3. Purpose of use	4. Place of use	Section (Projected) *	Township	Range	Base and Meridian	Acres
Domestic	Parcels 8-9, 11-14, 16-19 Within NW ¼ of SW ¼	31	35N	1E	MD	
Irrigation	Parcels 8-9, 11-14, 16-19 Within NW ¼ of SW ¼	31	35N	1E	MD	94.8

The place of use is shown on map on file with the State Water Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **0.25 cubic feet** per second to be diverted from **January 1 to December 31** of each year. The maximum amount diverted under this permit shall not exceed 181 acre-feet per year.
(0000005A)
6. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by **December 31, 2019**.
(0000009)
7. Diversion of water under this permit is allowed only so long as a water exchange contract with Shasta County Water Agency is in effect which covers the full amount of water diverted during the period from June 16 through August 31. A copy of the contract shall be filed with the State Water Board.
(0220089)
8. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion.
(0000022)
9. Rights under this permit are, and shall be, specifically subject to existing rights determined by the Adjudication, Superior Court, Shasta County, No. 115049 insofar as said adjudicated rights are maintained.
(0000023)
10. For the protection of fish and wildlife and riparian habitat, the permit shall bypass sufficient streamflow to maintain a continuous thread of surface flow below the permittee's point of diversion. The total streamflow shall be bypassed whenever it is less than the designated amount.
(0140060M)

11. Permittee or its successor shall divert water in accordance with the permit only when flow in Montgomery Creek at the El Dorado Hydro point of generation exceeds 100 cubic feet per second (cfs) (80 cfs for power generation and 20 cfs minimum bypass flow).

(0360300)

STANDARD TERMS AND CONDITIONS

ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
- B. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board (State Water Board) until a license is issued. (0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)
- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(0000015)

- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game.

(0000063)

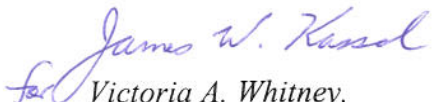
This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney,
Deputy Director for Water Rights

Dated: **OCT 19 2009**